

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5096 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1-5 No

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PARMAR GITABEN MAFALAL

Versus

SECRETARY

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Appearance:

MR SV PARMAR for Petitioner

MR. S.N. SHELAT, ADDL. ADVOCATE GENERAL with Ms.

Harsha Devani, AGP for

respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 27/07/98

ORAL JUDGEMENT

This matter comes on an application filed under Article 226(3) of the Constitution of India by the Secretary, Gujarat Legislative Assembly to vacate the interim order dated 3.7.1998 passed by this court in Special Civil Application No. 5096 of 1998. As the contentions of the Civil Application and the Special

Civil Application are the same, the main matter is taken up for final hearing.

2. In August, 1990, the respondent Gujarat Legislative Assembly called for the names of the qualified stenographers. The petitioner's name was forwarded by the district Employment Exchange office, Gandhinagar. She appeared and successfully passed the stenography test. Her name appeared in the merit list and accordingly she was appointed as Stenographer Grade III by order dated 28.2.1991. However, her appointment was cancelled by order dated 23.10.1991 as she did not fulfill the minimum qualification. The said order has gone unchallenged. However, she was engaged from time to time for a specified period, which as stenographer grade III has been given in para 3.4 of the writ petition. The same is extracted as follows:-

1. 20.2.1991 to 19.9.1991 Stenographer Grade III
2. 18.10.1991 to 17.1.1992 -do-
3. 27.1.1992 to 26.4.1992 -do-
4. 1.5.1992 to 2.11.1992 -do-
5. 3.11.1992 to 5.6.1995 Stenographer Grade II
6. 6.6.1995 to 27.7.1995 Stenographer Grade III.

3. It appears that during the period 3.11.1992 to 5.6.1995, she was also engaged as Stenographer Grade II. After a gap of 3 years she was again engaged as Stenographer Grade III by order dated 25.6.1998 for a brief duration of Assembly Session. Apprehending the removal on Assembly Session being over, she has approached this court.

4. An affidavit in reply to this petition has been filed by Mr. K.S. Sobti, Under Secretary of the Gujarat Legislative Assembly. It is stated that the petitioner was never given a regular appointment. She has been offered purely time bound stop gap appointment from time to time to meet with the exigency and need of the Assembly. It is stated that during the Session the Hon'ble Members of the Legislative Assembly require services of Gujarati Stenographer and for the purpose of facilitating their discussion Gujarati stenographers are required during the Session. Thus, it is submitted that on expiry of the term she is not entitled to continue in service.

5. It is contended by Mr. Parmar, learned counsel for the petitioner that the order dated 25.6.1998 should not be read in isolation. This order has to be read keeping in view the fact that she was initially appointed as stenographer grade III in February 1991 and since then

she has continued in service. With respect to break during the period 1995 to 1998 it is stated that there was a ban on recruitment. Relying on the decision of the Supreme Court in the case of SURENDRA KUMAR GYANI VS. STATE OF RAJASTHAN reported in (1992) 4 SCC 464 it is submitted that the services of the petitioner is required to be regularised. On the other hand Mr. S.N. Shelat, Addl. Advocate General submits that the petitioner is not entitled to continue beyond the term for which she was appointed by order dated 25.6.1998. He also submits that the services of the petitioner cannot be regularised on the post of Stenographer grade III as she has not been selected by regular process of selection. The learned counsel has placed reliance on various decisions of the Supreme Court and this court, via. MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LIMITED VS. DEVENDRA KUMAR JAIN & ORS. reported in JT 1995(1) SC 198, BHANMATI TAPUBHAI MULIYA VS. STATE OF GUJARAT reported in 1995(2) GLH 228, YAMINI J. DAVE VS. DIRECTOR, IUCAA & INFLIBNET PROGRAMME reported in 1996(1) GLH 664.

6. I have considered the rival contentions. It is not in dispute that the petitioner's regular appointment dated 28.2.1991 was cancelled by order dated 19.9.1991 as she did not fulfill the minimum qualification and the said order has not been challenged and it has attained its finality. Thereafter, she has been given appointment from time to time on ad hoc basis for specified periods. Apart from certain short intervals, there is significant interval of 3 years, i.e. the period of year 1995 to 1998. It is stated that there was ban on appointment during this period. Be that as it may the fact remains that she was not in service during the period 1995 to 1998. Therefore, the petitioner's appointment on the post of stenographer grade III by order dated 25.6.1998 for a specific term i.e. till the end of the Assembly Session has no connection with the appointment of earlier years. The authority relied on by the learned counsel for the petitioner in the case of SURENDRA KUMAR GYANI (supra) does not advance the case. In that case the court held that employees appointed on daily wages as a stop gap measure to meet the temporary need, the termination of such employees on availability of properly recruited persons is not illegal. It is of course true that in that case the court observed for sympathetic consideration of the employee against available vacancies. However, the Supreme Court in the subsequent case of MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LTD. (supra) has held that temporary government servants do not become permanent unless they acquire that capacity by force of any rule or is declared as permanent servants.

The Division Bench of this court in Bhanmati Tapubhai (supra) held that appointments which have been given for fixed term comes to an end by efflux of time. In such appointment the authority is not required to make any order of termination. This being the position of law, the petitioner is not entitled to any relief as she was appointed on 25.6.1998, for a brief period of second Assembly Session of the year 1998. The appointment has come to an end with the conclusion of second Assembly Session of 1998.

In view of the above, I find no merit in this Special Civil Application and the same is rejected. Interim relief vacated. Rule discharged.

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